

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

MICROSOFT CORPORATION, a)	
Washington corporation, and FS-ISAC, INC.,)	
a Delaware corporation,)	
)	Civil Action No: 1:20-cv-1171 (AJT/IDD)
Plaintiffs,)	
)	
v.)	
)	
JOHN DOES 1-2, CONTROLLING A)	
COMPUTER NETWORK AND THEREBY)	
INJURING PLAINTIFF AND ITS)	
CUSTOMERS,)	
)	
Defendants.)	
)	

MOTION TO WITHDRAW REQUEST FOR CONTINUED COURT MONITORING

Plaintiffs Microsoft Corporation (“Microsoft”) and FS-ISAC, Inc. (“FS-ISAC”; collectively, “Plaintiffs”) hereby moves to withdraw the request for continued monitoring of the injunctive relief in this matter by the Court Monitor on the basis that such oversight of Defendants’ compliance with the injunctive relief in this matter and oversight of the Trickbot command and control infrastructure are no longer necessary due to inactivity.

On October 20, 2020, the Court granted Plaintiffs' request for the appointment of a Court Monitor (Dkt. 38) under a preliminary injunction in order to ensure Defendants are restrained and enjoined from intentionally accessing and sending malicious software or code to Plaintiffs and the protected computers and operating systems of Plaintiffs' customers and associated member organizations, without authorization, in order to infect those computers and make them part of any botnet. Plaintiffs subsequently filed court monitor reports logging activities related to the botnet infrastructure.

On August 23, 2021, the Court issued a Report and Recommendation (Dkt. 65) for the

appointment of a Court Monitor to oversee on an ongoing basis, Defendants' permanent compliance with cessation of copyright infringement and violations of the Computer Fraud & Abuse Act associated with the use of malicious IP addresses and associated infrastructure used to deceive computer users, infect their computers, control their computers, and extract sensitive and confidential information.

A change in circumstances makes reconsideration of an interlocutory order appropriate. "[A]n injunctive order may be modified or dissolved in the discretion of the court when conditions have so changed that it is no longer needed or as to render it inequitable." *Tobin v. Alma Mills*, 192 F.2d 133, 136 (4th Cir. 1951) (citations omitted); see also *Dombrowski v. Pfister*, 380 U.S. 479, 492 (1965) ("[T]he settled rule of our cases is that district courts retain power to modify injunctions in light of changed circumstances."). "A court errs when it refuses to modify an injunction or consent decree in light of such changes." *Agostini v. Felton*, 521 U.S. 203, 215 (1997) (citation omitted). Thus, "a district court may modify a preliminary injunction in light of subsequent changes in the facts or the law, or for any other good reason." *Ohio Valley Envt'l. Coal. v. United States Army Corps of Engineers*, No. CV 3:08-0979, 2009 WL 10688886, at *1 (S.D. W. Va. Aug. 21, 2009) (citing *Centennial Broadcasting*, 433 F. Supp. 2d at 733) (internal quotations omitted). *United States v. Mallory*, No. CV 3:18-1289, 2019 WL 252530, at *2 (S.D.W. Va. Jan. 17, 2019).

Since the Plaintiffs submitted Court Monitor Report No. 8 on June 30, 2022 (Dkt. No. 82), Plaintiffs reported no activity on the Trickbot infrastructure, based on their own investigation and monitoring of the infrastructure. More broadly, over the course of this year, the security research community has similarly observed the cessation of the Trickbot botnet.¹ Subsequently, there is no longer any need for Plaintiffs to seek further orders of the Court Monitor overseeing the injunctive

¹ See e.g. <https://thehackernews.com/2022/02/notorious-trickbot-malware-gang-shuts.html>

relief in this matter or to engage in reporting regarding such activities.

THEREFORE, upon filing of this Motion to Withdraw Request for Continued Court Monitoring, Plaintiffs hereby notify the Court that they will not seek the continued appointment of the Court Monitor, will not seek further orders of the Court Monitor overseeing injunctive relief and, as a result of the cessation of such activities, will not request preparation or filing of further reports with the Court regarding such activity. The Plaintiffs respectfully request that the Court Monitor and the Plaintiffs be relieved of their respective obligations regarding the activities of the Court Monitor under the injunctions issued by the Court at Dkt. 38 and 65.

Dated: November 11, 2022

Respectfully submitted,

/s/ David J. Ervin

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CERTIFICATE OF SERVICE

I hereby certify that on November 11, 2022, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system.

Copies of the forgoing were also served on the defendants listed below by electronic mail and mail:

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c/o

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